

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

KYLE G. BROWNFIELD, PETITIONER

v.

METROPOLITAN LIFE INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Insurance companies have been inappropriately denying claims for benefits under disability policies for years. This practice was made even worse when the "Treating Physician Rule" was effectively killed by the U.S. Supreme Court in *Black & Decker v. Nord* (2003). Subsequently, insurance companies have become even more brazen in denying disability claims. The absence of good law protecting disabled people is so lacking that the New York State Attorney General Eliot Spitzer went after UnumProvident – one of the worst offenders. In a landmark settlement reached on November 19, 2004, UnumProvident agreed to impose sweeping reforms that will protect disabled workers under their policies. John Garamendi, the California Insurance Commissioner, initiated a completely separate settlement agreement with UnumProvident.

Unfortunately, MetLife, unconstrained by any settlement agreement, continues to practice the same unjust claims handling procedures that UnumProvident was found guilty of and ultimately fined. MetLife, along with other insurance companies, will continue to support their unjust denial of benefits on a regular basis supported by the ruling of *Black & Decker v. Nord*.

Three questions are presented:

1. Did *Black & Decker v. Nord* increase an already serious injustice that allowed insurance companies to deny thousands of disabled persons their rightfully due benefits?
2. Should the U.S. Supreme Court resolve the dispute among the Circuits as to whether credible

evidence from outside the administrative record should be admissible to show the extent of the conflicts of interest that insurance companies have committed in denying disability benefits?

3. Is there a simple solution that will correct the existing case law now seriously affecting disabled persons?

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OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Ninth Circuit was unreported and is reproduced in the Appendix at 1a - 3a. The Judgment of the United States Court of Appeals for the Ninth Circuit was unreported and is reproduced in the Appendix at 4a. The Original Judgment of the United States District Court for the Central District of California was unreported and is reproduced in the Appendix at 5a. The Corrected Judgment of the United States District Court for the Central District of California was unreported and is reproduced in the Appendix at 6a. The Order Denying the Petition for Rehearing *En Banc* was unreported and is reproduced in the Appendix at 7a - 8a.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1):

The Ninth Circuit's opinion was rendered on September 14, 2005. A timely Petition for Rehearing *En Banc* was denied on November 3, 2005. Appendix 7a - 8a.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**Title 29 United States Code, Section 1132**

A civil action may be brought—
(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

STATEMENT

The Ninth Circuit affirmed the district court's decision to deny Petitioner's disability benefits arising under a disability plan governed by "ERISA" (Employee Retirement Income Security Act of 1975, 29 U.S.C. §1001, et seq.) In affirming the district court's denial of benefits, the Ninth Circuit was arguably handcuffed by the U.S Supreme Court's decision regarding the "Treating Physician Rule" in *Black & Decker v. Nord*, 123 S. Ct. 1965 (2003).

In this case, the Respondent and Claims Administrator, Metropolitan Life Insurance Company, "MetLife" hired a physician-consultant to review Petitioner, Kyle Brownfield's "Brownfield" medical file. This physician made MetLife aware that certain documentation was lacking to support Brownfield's impairment. MetLife was in possession of the documentation which supported Brownfield's impairment, yet did not provide it to their hired physician-consultant. MetLife then used their physician's opinion, citing lack of supporting documentation, to deny Brownfield's claim for disability benefits. MetLife claimed they relied on *Black & Decker v. Nord*, to support their denial of benefits. MetLife's physician-consultant sided with his employer's (MetLife) denial in spite of never having

examined or spoken to Petitioner, completely ignoring the opinion of Brownfield's treating physician, and never having received the medical documentation he requested from MetLife.

In affirming the denial of disability benefits of Petitioner, the Ninth Circuit did not consider evidence outside the administrative record to show the full extent of the **many** conflicts of interest that existed when MetLife denied Petitioner's disability benefits. The Ninth Circuit's decision refusing to consider this evidence conflicts with the holdings of the Fifth Circuit and greatly prejudiced Brownfield.

CHRONOLOGY OF EVENTS:

September 27, 1976 - Petitioner, Kyle G. Brownfield was hired by Kodak.

June 12, 1980 - Dr. Stanford Noel, M.D. (Brownfield's treating physician at that time) wrote in a letter to Kodak that Brownfield had a medical condition which affected the spine and connective tissue holding her joints together, which would eventually prove disabling. When Brownfield became disabled, she provided Dr. Noel's letter from 1980 predicting her disability to both Kodak and MetLife. MetLife denied either party ever receiving it. Dr. Noel's letter from 1980 stated,

"this young woman has been under my treatment since 1975 for symptoms relating to seronegative spondylitis. She has radiographic evidence of spondylitic changes throughout the thoracic and lumbar spine. **She has also had migratory arthralgias of**

peripheral joints, which are not currently disabling."

Brownfield worked for over twenty-five (25) years at Kodak. She held the positions of Sales Representative, Regional Account Manager, Regional Sales Manager and National Sales Manager. She received many awards during that time, including being honored by the CEO of Kodak, as "Kodak Employee of the Year," a prestigious honor given only to her out of the over 6,000 employees in her division. During that time, she endured the continuing progression of that disease while missing only 6 days of work.

August 1, 2001 - she experienced sciatica (nerve pain) so severely that she was taken to Mission Hospital, where her husband required additional assistance to get her out of the car. The orderlies brought a gurney, and helped her out of the car and wheeled her into the emergency room. At the Mission Regional Imaging Center, an MRI revealed multilevel degenerative disc disease.

August 23, 2001 - Dr. Sten Kramer (her treating physician) placed Brownfield on Kodak Short Term Disability and prescribed physical therapy three times a week due to acute lumbar spine strain and degenerative disc disease of the lumbar spine.

March 4, 2002 - even though Brownfield had not worked for 7 months, she was notified that she was being laid off. Her final day at Kodak would be 17 months before she was eligible for retirement. Her contact at Kodak Benefits, Mike Pribanich, assured her

that she would have no problem qualifying for Long Term Disability.

March 15, 2002 - Brownfield applied for Kodak's Long Term Disability benefit at the same time she applied for Social Security Disability benefits.

April 4, 2002 - MetLife referred Brownfield's claim to their **in-house** nurse consultant, K. Buck.

April 9, 2002 - Ms. Buck conducted a telephone interview with Brownfield.

MetLife's Trial Brief claimed that Brownfield's Dr. Kramer was non-responsive to their requests for information. "Ms. Buck attempted to contact Dr. Kramer several times between April 9 and April 18, 2002 by faxing him questions and by leaving telephone messages."

This statement was contrary to MetLife's own internal diary which confirmed that Buck's first call to Dr. Kramer after 4/9/02 was on 4/17/02.

During the aforementioned time frame, on 04/17/2002, Ms. Buck did indeed speak with Dr. Kramer. MetLife's diary only showed one other call to Dr. Kramer left by Ms. Buck requesting that he call her back. This call took place on 04/18/2002 when Dr. Kramer's office was closed and everyone including Dr. Kramer was at lunch. Kramer's office says they returned that call.

May 1, 2002 - MetLife wrote to Brownfield denying her claim for Long-Term Disability Benefits.

Ms. Buck stated, "Based on the lack of cooperation from Dr. Kramer and failure to return my calls to discuss the file as well as the lack of objective findings, [I] feel that the medical [evidence] does not support [Plaintiff's] inability to perform the job functions of any occupation."

It is clear that MetLife's Claims Administrator (K. Buck) misrepresented actual events to support a denial of disability benefits to Brownfield.

May 3, 2002 - Brownfield called MetLife and was told over the telephone that her Long Term disability claim had been denied. A letter was not received until mid-June informing her in writing of the denial.

June 23, 2002 - Brownfield was granted Social Security Disability benefits.

August 1, 2002 - Brownfield sent documents to MetLife as shown in MetLife's internal diary. "Letter from EE [Employee (Brownfield)]. Receipt of another letter dated 7/22/02. EE has also sent in additional medical dated 6/14/2001."

August 30, 2002 - MetLife's internal diary noted:

"We have now received additional medical. - EE is a 48 y.o. female who worked as a sales rep for Kodak for 24 years. Disability is chronic left SI joint dysfunction, chronic discogenic neck pain, degenerative disc disease/spondylosis C3-C4-5, chronic thoracic strain, multilevel degenerative disc paracentral disc bulge L5-S-1 and hypoplastic fusion L4-5, and spastic bladder syndrome. The

5/9/02 medical that we just received indicates that the claimant returned complaining of severe back pain in the mid back and lower back regions. **His** medications are Lodine, 400 mg b.i.d., Topamax 50 mg o.h.s., and Zanaflex 2-4 mg at night. Dr. Clifford Bernstein recommended that the claimant have prolotherapy injections to the left SI joint. On 5/10/02, the claimant underwent left sacroiliac joint injection with prolotherapy. On 5/30/02 the claimant returned to **his** AP complaining of severe pain again. It was recommended that **he** have injections again for **his** pain. On 5/31/02 and 6/10/02, the claimant underwent prolotherapy again with Dr. Kramer. On 7/12/02, the claimant underwent surgery of the left foot for Morton's neuroma excision. On 7/25/2002, the claimant returned to **his** AP complaining of midback pain and spastic bladder symptoms. EE is scheduled for surgical procedure for the spastic bl 'der in August. On 7/26/02, EE underwent catheter directed thoracic epidural steroid injections with Dr. Kramer. Please evaluate the new medical that was just received and provide an opinion on the severity of Kyle Brownfield's disability. D. Burdick."

If MetLife wasn't so busy trying to deny this appeal, they would have paid more attention to Kyle Brownfield's records and realized that **his/he** was actually a woman.

September 11, 2002 - MetLife sent a portion of Brownfield's file to their physician consultant, Dr. Richard A. Silver. MetLife asked Dr. Silver to provide answers to the following questions: